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**EXECUTIVE OFFICE FOR
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Office of Policy | Legal Education and
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Federal Agencies

DOJ

- **[EOIR Publishes Final Rule Authorizing Four Additional BIA Board Members — EOIR](#)**

On February 27, 2018, a final rule was published in the Federal Register. Effective on that date, the final rule amends 8 C.F.R. § 1003.1 to increase the number of BIA Board Members from 17 to 21 (an interim rule published on June 3, 2015, had increased the number of BIA Board members from 15 to 17).

- **[BIA Issues Amicus Invitation No. 18-02-27 — EOIR](#)**

Issues Presented: 1) Whether, in light of [Matter of I-G-H-](#), 26 I&N Dec. 365 (BIA 2014), Fla. Stat. 893.13 (6)(a) categorically defines a violation “relating to” a controlled substance as provided in sections 212(a)(2)(A)(i)(II) and 237(a)(2)(B)(i) of the Act; 2) Whether the definition of cocaine provided in Fla. Stat. § 893.03(2)(a) is coextensive with the definition provided in the federal controlled substance schedules, if not, what the import is of any difference in the definitions, and whether any difference is clearly evident from the Florida statute’s text; and 3) Whether, if the definition of cocaine provided in Fla. Stat. § 893.03(2)(a) is not coextensive with the definition provided in the federal controlled substance schedules, the Florida statute is divisible as to the nature of the controlled substance such that the application of the modified categorical approach is appropriate.

- **[OCAHO Issues Decision in *Dakarapu v. Arvy Tech, Inc.* — EOIR](#)**

13 OCAHO no. 1308 (2018)

The respondent’s motion to dismiss was granted because the complainant’s antidiscrimination charge was untimely filed. The complainant’s earlier emails to the [Immigrant and Employee Rights Section](#) (IER) of DOJ’s Civil Rights Division did not constitute a charge because they did not allege an unfair immigration-related employment practice under section 274B of the Act. Additionally, the complainant did not show that his “communication with IER [was] sufficient to justify invoking the rarely used remedy of equitable tolling.”

- **[Virtual Law Library Weekly Update — EOIR](#)**

This update includes resources recently added to EOIR’s internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- **[USCIS Director L. Francis Cissna Shares New Agency Mission Statement](#)**

The new mission statement released on February 22, 2018 states: “U.S. Citizenship and Immigration Services administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.”

- **USCIS Issues PM-602-0157 on Contracts and Itineraries Requirements for Certain H-1B Petitions**

The policy memorandum provides “clarifying guidance” related to H-1B petitions filed for workers who will be employed at one or more third-party worksites, “to protect the wages and working conditions of both U.S. and H-1B nonimmigrant workers and prevent fraud or abuse.” The policy is effective as of February 22, 2018.

DOS

- **DOS Designates as Terrorists Additional ISIS Affiliates and Individuals**

On February 27, 2018, DOS designated additional ISIS leaders and operatives as Specially Designated Global Terrorists (SDGTs) under the Act, and designated additional ISIS affiliates as SDGTs or as Foreign Terrorist Organizations (FTOs) under Executive Order 13224. DOS also released a [Fact Sheet](#) addressing frequently asked questions regarding terrorist designations.

Supreme Court

OPINION

- **Jennings v. Rodriguez**

No. 15-1204, 2018 WL 1054878 (U.S. February 27, 2018) (Bond)

The Supreme Court reversed the Ninth Circuit’s judgment and remanded, holding that sections 235(b), 236(a), and 236(c) of the Act do not give detained aliens the right to periodic bond hearings during the course of their detention. The Court concluded that the Ninth Circuit misapplied the canon of constitutional avoidance in concluding otherwise. The Court instructed the Ninth Circuit on remand to first reexamine whether the respondents can continue litigating their claims as a class before it considers the merits of the respondents’ constitutional arguments in the first instance. For a more detailed summary, see Policy & Case Law Highlights - February 27, 2018.

MOTION TO EXPEDITE GRANTED IN PART

- **Int'l Refugee Assistance Project v. Trump**

No. 17-1194, 2018 WL 1053601, at *1 (U.S. Feb. 26, 2018)

The [motion](#) to expedite consideration of a petition for a writ of certiorari, filed concurrently with the petition on February 23, 2018, was granted in part on February 26, 2018. [Questions Presented](#): 1) Whether the challenges to the President’s suspension of entry of aliens abroad are justiciable; 2) Whether the Proclamation is a lawful exercise of the President’s authority to suspend entry of aliens abroad; 3) Whether Proclamation No. 9645 violates the Establishment Clause; 4) Whether the scope of the injunction is overbroad; and 5) Whether the preliminary injunction was properly limited to individuals with a bona fide relationship to a person or entity in the United States.

CERT. DENIED

- **Levy v. Sessions**

No. 17-7205, 2018 WL 1037610, at *1 (U.S. Feb. 26, 2018)

Questions presented are unavailable at this time.

- **Rivera Perez v. Sessions**

No. 17-902, 2018 WL 1037585, at *1 (U.S. Feb. 26, 2018)

[Questions Presented](#): 1) Whether it is constitutional to rule on nexus prior to making a ruling on whether a cognizant class is recognized when the cognizant class has been recognized in other circuits; and 2) Whether the element of nexus is inherently arbitrary

and capricious as relates to a person seeking asylum in the United States.

Second Circuit

- **[Wei Sun v. Sessions](#)**

No. 15-2342-ag, 2018 WL 1021221 (2d Cir. Feb. 23, 2018) (Corroboration)

The Second Circuit denied the PFR, according Chevron deference to the Board's interpretation of section 208 (b)(1)(B)(ii) of the Act "as not requiring an IJ to give a petitioner specific notice of the evidence needed to meet his burden of proof, or to grant a continuance before ruling to give a petitioner an opportunity to gather corroborating evidence." See [Matter of L-A-C-](#), 26 I&N Dec. 516, 524 (BIA 2015). The court declined to adopt the Ninth Circuit's interpretation of the statute. See *Ren v. Holder*, 648 F.3d 1079, 1090-91 (9th Cir. 2011).

Fourth Circuit

- **[United States v. Middleton](#)**

No. 16-7556, 2018 WL 1056944 (4th Cir. Feb. 26, 2018) (Crime of violence)

The Fourth Circuit reversed the district court's judgment and remanded, concluding that the petitioner's conviction for South Carolina involuntary manslaughter—which encompasses selling alcohol to a minor who provides it to a driver who dies in an alcohol-induced automobile accident—does not categorically qualify as a violent felony under the force clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)). The court agreed with the defendant that the South Carolina statute sweeps more broadly than the physical force required under the ACCA's force clause, rejecting the Government's reliance on *United States v. Castleman*, 134 S. Ct. 1405 (2014), because the Government ignored the distinction between de minimis force and violent force, and "erroneously conflate[d] the use of violent force with the causation of injury."

- **[Santos Mejia v. Sessions](#)**

No. 17-1216, 2018 WL 985782 (4th Cir. Feb. 20, 2018) (unpublished) (Asylum – PSG; nexus)

The Fourth Circuit denied the PFR, concluding that the petitioner's proposed social group consisting of "Honduran women evading rape and extortion" was not legally cognizable because it lacked [social distinction] and particularity. Additionally, the court affirmed the agency's finding that the petitioner failed to establish a sufficient nexus between her persecution and her membership in a particular social group.

Ninth Circuit

- **[Huelgas v. Sessions](#)**

No. 15-72518, 2018 WL 1060514 (9th Cir. Feb. 27, 2018) (unpublished) (MTR)

The Ninth Circuit granted the PFR and remanded, determining that the Board "erred when it concluded that the IJ's failure to inform [petitioner that he may have been eligible for relief from removal] was not an allegation of 'deception, fraud or error.'" Consequently, the court also found that the Board abused its discretion in rejecting the petitioner's request for equitable tolling of the ninety-day filing deadline for motions to reopen. Additionally, the court remanded for the Board to provide a reasoned explanation regarding "whether [the petitioner] demonstrated due diligence in filing the motion to reopen," and whether he was prejudiced by "the IJ's failure to properly advise [him] of his possible grounds of relief."

Eleventh Circuit

- [Levy v. U.S. Att'y Gen.](#)

Nos. 16-14726, 16-14972, 2018 WL 1005063 (11th Cir. Feb. 22, 2018) (Derivative citizenship)

The Eleventh Circuit granted the petition for panel rehearing, withdrew its previous decision and concluded that petitioner's Fifth Amendment rights were not violated because former section 321(a) of the Act (1985) does not discriminate based on gender or legitimacy. The Court also rejected the petitioner's argument that former section 321(a) "unconstitutionally burdens his fundamental right to maintain a family unit."